IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGNAL SIDE JURISDICTION

Arbitration Application No.11 of 2007

M/s D.P. Jain & Co
through Partner Mr Deepak Jain
having its office at U/6
Himayala Accord Apartments
Opp Law College
Amravati Road Nagpur ..Applicants

vs

1. The Container Corporation of India Ltd
through the director (P & S)
Concur Bhavan, C-3 Mathura Road
New Delhi ll0076
2. General Manager (Engg)
Container Corporation of India Ltd
Concur Bhavan C 3 Mathura Road
New Delhi ll0076 .. Respondents

Mr V.R Hukmani for the applicants.
Mr M Tally i/b S Mahomedbhai & Co
for respondents

CORAM: SWATANTER KUMAR,C.J.

Judgment reserved on 6.7.2007.
Judgment pronounced on 17.8.2007

JUDGMENT:-

The applicants are carrying on business of engineering and contractor undertaking various jobs from different clients, including the Container Corporation of India, under the name and style of M/s D.P.Jain and Co, a partnership firm concern.

Respondent No.1 invited tenders for construction and pavement work, road, bridge, and chain link fencing etc at ICD Agni, Nagpur (Phase IV) for the value of Rs.1,96,50,285.79 and the work was to be completed within six months.

The letter of intent was issued to the applicants on 21st December 2004/14th February 2005 in furtherance to which the work order was placed. The parties entered into an agreement which, besides other terms and conditions, also made applicable the general conditions of the contract. In terms of clauses 63 and 64 of the general conditions of the contract, disputes between the parties were referable to n arbitration.

After placing of the work order various disputes arose between the parties including the allegation that unhindered possession of the site was not given, various obstructions were caused and there were high tension electric lines passing through the area, which restricted carrying out of the work. Despite the fact that the applicants had mobilised their required material at the site, due to the hindrance caused and non-cooperation by respondent No.1, the work could not be completed within time. The claimants thereafter issued notice 22nd September 2006 through their advocate dated calling upon

the respondents to appoint arbitrator in terms of the arbitration clause between the parties. Since they failed to get requisite relief at the hands of the respondents, the applicants filed the present application under section 11 of the Arbitration and Conciliation Act, 1996, hereinafter referred to as the “Act”, primarily for the reasons that the respondents have failed to act despite notice.

A reply was filed on behalf of the respondents wherein it was stated that the value of the contract was Rs.1,96,50,285.79 and the claim raised by the applicants is much in excess thereof and in terms of clauses 63 and 64, no arbitral tribunal could be appointed once the claims are in excess of 20% of the contract value. In this regard the respondents also relied upon the order of this court in Arbitration Application No. 9 of 2006 (M/s Shriram Construction vs Union of India) decided today.

The learned counsel for the applicants fairly stated that the applicants would serve fresh notice upon the respondents restricting their claim to 20% and require them to act in accordance with clauses 63 and 64 of the general terms and conditions of the contract between the parties. Furthermore he

reserved his right to take other legal remedies as may be permissible in law in relation to the balance claim.

In view of the statement made by the learned counsel for the applicants and consistent with the orders of this court, nothing survives in this application and the same is disposed of. Liberty to the applicants as prayed for. If such a request is made within two weeks from today, respondents shall act in accordance with clauses 63 and 64 of the general terms and conditions and constitute the arbitral tribunal. The period taken during the pendency of this application would not be construed against the applicant.

4. All questions on merits are left open to the decision of the Arbitrator including arbitrability of the claim. Liberty to the respondents to file their counter claim, if any, before the Arbitrator.

This application is accordingly disposed of with no order as to costs.

CHIEF JUSTICE